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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,365	01/14/2004	Philip Gray	830 010	3315
25191	7590	11/12/2008	EXAMINER	
BURR & BROWN PO BOX 7068 SYRACUSE, NY 13261-7068			NEWAY, SAMUEL G	
ART UNIT	PAPER NUMBER			
	2626			
MAIL DATE	DELIVERY MODE			
11/12/2008	PAPER			

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/757,365	<b>Applicant(s)</b> GRAY ET AL.
	<b>Examiner</b> Samuel G. Neway	<b>Art Unit</b> 2626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 30 July 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-7 and 9-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 7,15 and 16 is/are allowed.

6) Claim(s) 1-6 and 9-14 is/are rejected.

7) Claim(s) 17 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/95/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This is responsive to the RCE filed on 30 July 2008.
2. Claims 1 – 7 and 9 – 17 are pending and considered below.

***Claim Objections***

3. Claims 4 – 6, 9, 10, 14 and 17 are objected to because of the following informalities: independent claims 4 and 9 disclose the limitations "identifying an identified dominant distortion" and "selecting a selected distortion" which have redundancies that render the claims unclear. It is not clear why it is necessary to identify an already identified dominant distortion or select an already selected distortion.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1 – 6 and 9 – 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Process claims 1 – 6, 13, and 14 are directed to non-statutory subject matter because the process is neither tied to another statutory class (such as a particular apparatus) nor does it transform underlying subject matter (such as an article or materials) to a different state or thing.

In claims 9 – 12, an "apparatus" is recited; however, Applicant's specification discloses that the means recited as part of the apparatus can be represented by

software per se (Applicant's specification, page 9, line 24-28). Software is functional descriptive material and therefore non-statutory, absent being claimed in combination with the necessary hardware to enable the software to act as a computer component and realize its functionality.

***Allowable Subject Matter***

6. Claims 7, 15, and 16 are allowed.

The following is an examiner's statement of reasons for allowance: the prior art of record, individually or in combination, does not disclose dividing a database comprising a plurality, each with an associated mean opinion score, into a plurality of distortion sets of samples according to a dominant distortion present in each sample and training a distortion specific assessment handler for each distortion set as claimed.

7. Claim 17 would be allowable if rewritten or amended to overcome the objection set forth in this Office action.

The following is an examiner's statement of reasons for allowance: the prior art of record, individually or in combination, does not disclose identifying a dominant a distortion type, selecting a distortion specific assessment in dependence upon the dominant distortion type and generating a quality measure as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Neway whose telephone number is 571-270-1058. The examiner can normally be reached on Monday - Friday 8:30AM - 5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David R Hudspeth can be reached on 571-272-7843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R Hudspeth/  
Supervisory Patent Examiner, Art Unit 2626

/S. G. N./  
Examiner, Art Unit 2626